



# Commonwealth of Massachusetts State Ethics Commission

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Norfolk County Sheriff  
Clifford H. Marshall  
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## PUBLIC ENFORCEMENT LETTER 95-2

Dear Sheriff Marshall:

As you know, the State Ethics Commission ("Commission") has conducted a preliminary inquiry concerning whether you, as Norfolk County Sheriff, violated the state conflict of interest law, G.L. c. 268A, by using your power to appoint deputy sheriffs as a means of raising funds for your political campaign committee. Based on the staff's investigation (discussed below), the Commission voted on November 8, 1994 that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §§13 and 23. The Commission, however, does not feel that further proceedings are warranted and has, rather, determined that the public interest would be better served by bringing to your attention, and to the attention of your colleagues throughout the Commonwealth, the facts revealed by our investigation and by explaining the application of the law to such facts, with the expectation that this advice will ensure your understanding of and future compliance with the conflict of interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

### I. Facts

1. At all relevant times, you were the sheriff of Norfolk County, a paid elected position. You were first elected as Norfolk County Sheriff in 1974 and were subsequently reelected as sheriff in 1980, 1986 and 1992.

2. As Norfolk County Sheriff, you have the statutory power to appoint deputy sheriffs, who serve at your pleasure.<sup>1/</sup> As Norfolk County Sheriff, you have appointed 795 deputy sheriffs since 1986. As of late 1992, there were approximately 1166 Norfolk County deputy sheriffs.<sup>2/</sup>

3. Each person you appoint as a deputy sheriff signs a written oath of allegiance, which is also signed by you. This form is then filed with the Office of the Secretary of State.<sup>3/</sup>

4. Deputy sheriffs have certain statutory powers, including the power to serve process, to transport prisoners and other persons in custody, and to arrest, as set forth in G.L. c. 37.<sup>4/</sup>

5. In 1986, 1989 and ending in January 1992, you, as sheriff, held three swearing-in ceremonies for deputy sheriffs, which each occurred in connection with a meal for which a donation payable to your political campaign committee, the Clifford Marshall Sheriff Committee ("Marshall Committee"), was charged. Participation in the meal (and payment of the donation) was not required for participation in the swearing-in ceremony, nor were your deputy sheriffs required to attend the swearing-in ceremony.

6. In a "Dear Deputy Sheriff" letter dated December 16, 1991, you informed the addressees of the following,

The annual "Swearing-In" Ceremony of the Norfolk County Civil and Criminal Deputy Sheriffs will take place Sunday, January 12, 1992, at Mosley's On-the-Charles ... a breakfast will precede the Swearing-In ceremony beginning at 10:00 a.m. If you are joining us for breakfast the donation is \$50 per person.<sup>5/</sup>

The letter was printed on letterhead stationery ("Sheriff Clifford H. Marshall, High Sheriff to Norfolk County, P.O. Box 266, Dedham, MA 02026") and was signed by you above "Clifford H. Marshall, Sheriff." The stationery states at the bottom, "This stationery & postage privately paid for." Included with the letter was a printed reply card captioned, "Deputy Sheriff's Swearing-In Ceremony, January 12, 1992." The reply card provided three responses to check in the following order: "Enclosed is my \$50.00 check to attend the breakfast;" "I plan to attend only the Swearing-In"; and "I plan to attend the tour." The reply card instructed the recipient to respond by January 8, 1992, and further instructed, "No corporate checks accepted. Please make checks payable to: Clifford H. Marshall Sheriff Committee. P.O. Box 266, Dedham, MA 02026."<sup>6/</sup>

7. In several statutorily-required reports filed with the state Office of Campaign and Political Finance ("OCPF"), the Marshall Committee reported the receipt in December 1991 and January 1992 of 220 contributions, totaling \$13,245. Two hundred and fifteen of the contributions were from individuals and the vast majority were in the amount of \$50. Of the 215 individual contributors, 188 were Norfolk County deputy sheriffs.

8. You have, through counsel, informed the Commission that you have ceased the practice of holding political fundraisers in connection with the swearing-in of deputy sheriffs and will hold no such events in the future.

## II. Discussion

As Norfolk County Sheriff, you are a county employee. As such, you are subject to the conflict of interest law, G.L. c. 268A.

The evidence developed in this investigation indicates that you previously made the ceremonial swearing-in of deputies the ostensible official purpose of three campaign fundraising events. Thus, you used your official position to turn an official swearing-in ceremony into a valuable fundraising tool for your campaign committee. The question is whether, in so doing, you secured for your campaign committee and yourself an unwarranted privilege of substantial value which was not properly available to you and similarly situated persons, in violation of G.L. c 268A, §23(b)(2).<sup>7/</sup>

The Commission concludes that your use of the swearing-in of deputies as a political fundraising attraction benefitted a personal rather than a public interest and thus exceeded the proper use of your office as sheriff. (Compare the situation if, for example, you had used the swearing-in ceremony as an attraction for a fundraiser for a Jail inmate literacy program.) Furthermore, the combining of the swearing-in ceremony with the fundraiser imbued the fundraiser with a sense of credibility (as an official event) and fostered an obligation to attend on the part of solicitees that otherwise would have been lacking if it had been merely a bare bones political fundraiser. Accordingly, your use of the swearing-in ceremony as an attraction for your fundraisers was an unwarranted privilege of substantial value<sup>8/</sup> in violation of §23(b)(2).<sup>9/</sup>

This same conduct also violated G.L.c. 268A, §23(b)(3)'s prohibition against a public official knowingly, or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of party or person. Your solicitation of political contributions from current deputies in conjunction with the swearing-in of new deputies, especially given the extraordinary large number of deputies appointed by you and the apparent lack of any public utility of many of those deputies, would cause a reasonable person to conclude that you appoint political supporters as deputy sheriffs and expect those deputies to continue to contribute to your campaign fund after their appointment. The reasonable inference from these circumstances and the appearance created by your conduct is that your appointment of deputy sheriffs is unduly influenced by the fact that the appointees are contributors to your political campaign fund or are likely to be contributors following their appointment. This violates §23(b)(3).

### III. Disposition

Based upon its review of this matter, the Commission has determined that this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.<sup>10/</sup>

This matter is now closed.

DATE: January 9, 1995

<sup>1/</sup> The principal powers of county sheriffs are set forth in G.L. c. 37. Pursuant to G.L. c. 37, §3, sheriffs are empowered to appoint deputies “who shall be sworn before performing any official act.”

<sup>2/</sup> Some current deputy sheriffs were appointed by your predecessors in office prior to your first election as sheriff.

<sup>3/</sup> We reviewed all of the allegiance forms of deputy sheriffs appointed by you since January 1986 which have been filed with the Secretary of State’s Office. The allegiance form used in each appointment is the same and each form gives “Deputy Sheriff” as the title of the appointee’s office. None of the forms refers to the “Deputy Sheriff” title or appointment as “honorary” or otherwise distinguishes among the appointments.

<sup>4/</sup> While many of the deputy sheriffs appointed by you exercise at least some of their statutory powers, e.g., in the course of their employment as correction officers at the Norfolk County Jail and House of Correction or as civil deputies, many others have never exercised any of their official powers or received any compensation for any official acts as deputy sheriffs.

<sup>5/</sup> In addition, the letter invited the invitee “to attend an exclusive preview of the Norfolk County Sheriff’s Office and Correctional Center,” i.e., a tour of the new Norfolk County Jail.

<sup>6/</sup> Given that the Marshall Committee paid \$320 to have 1,250 reply cards and envelopes printed, it appears that that many persons were invited to the January 1992 event. A far fewer number of people, however, apparently attended the breakfast, as on January 12, 1992, the Marshall Committee paid Mosley’s \$2,300 for the function, at a rate of \$8 per person, indicating that breakfast was served to approximately 275 people.

<sup>7/</sup> Section 23(b)(2) of G.L. c. 268A prohibits a county employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

<sup>8/</sup> As the Commission noted in *EC-COI-92-5*, for the purposes of §23(b)(2), the raising of \$50 or more would constitute substantial value. *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8*.

<sup>9/</sup> The use of an official swearing-in ceremony for political fundraising purposes is analogous to the use of the Great Seal of the Commonwealth on private stationery for fundraising and other campaign purposes, which was dealt with by the Commission in its March 1992 legal opinion *EC-COI-92-5*. The reasoning by which the Commission in *EC-COI-92-5* determined that “the Seal may not be displayed by public officials seeking reelection or higher office on private stationery for fundraising or other campaign purposes” appears readily applicable to the facts of this case.

In *EC-COI-92-5*, the Commission prohibited the use of the Seal based upon the following reasoning:

...We find that the use by a public official of the Seal for political fundraising or other campaign purposes exceeds the proper use of a public employee’s office. (footnote omitted). Such campaign activity benefits a personal rather than a public interest. The recipients of such solicitation could reasonably infer that the solicitation was supported or endorsed by the Commonwealth, when in fact it is intended to benefit a personal purpose (an individual’s political campaign). (footnote omitted) Because displaying the state Seal may foster a sense of credibility or obligation which the solicitation might not otherwise have had, the use of the state Seal is an unwarranted privilege in violation of §23. (footnote omitted)

<sup>10/</sup> The Commission is authorized to impose a fine of up to \$2,000 for each violation of G.L. c. 268A. The Commission chose to resolve this matter with a public enforcement letter because the Commission believes that it may not have been readily apparent that this intermingling of political and official activity would raise issues under G.L. c. 268A.